

The issue for the Board's review is did claimant suffer a new and distinct injury or is his current condition a natural consequence of the compensable work-related injury suffered in this docketed claim?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On April 7, 2004, claimant was performing his regular job duties for respondent putting envelopes and tissue onto his cart and from there onto the benches so that the machine operators could load their machines. He bent down to pick up a box of envelopes and apparently twisted wrong because he heard a "pop" and immediately felt pain in his low back. Claimant notified his supervisor of the accident and was sent to Dr. Michael Mosier. Claimant was diagnosed with a back strain/sprain, prescribed medication and was given work restrictions limiting his lifting to 25 pounds and no bending or twisting. Claimant later received physical therapy and was placed on a home exercise program. He continued to work within his light duty restrictions. Although on May 11, 2004, his lifting restriction was increased to 50 pounds, claimant continued symptomatic and was continued on pain medication.

On Sunday, May 16, 2004, claimant awoke with significant pain. He could not stand nor bend over to tie his shoes. His girlfriend took him to the emergency room where he was given pain medication. Claimant returned to Dr. Mosier on May 19 and reported the increase in his symptoms. Claimant reported that he had used a lawnmower to cut his grass on Saturday, but did not suffer an accident or feel any increase in back pain at that time. Claimant said he did feel an increase in muscle tightness but did not think he had done anything to his back. Dr. Mosier recommended additional testing, including an MRI. However, respondent's workers compensation insurance carrier would not authorize any additional treatment or testing. Consequently, claimant proceeded to preliminary hearing to request that additional treatment be authorized.

Claimant has had no prior workers compensation claims and denies any previous low back injuries. The question presented to the ALJ and now to the Board is whether claimant's activities on Saturday, May 15, 2004, constituted an intervening accident and injury such that respondent should be relieved of responsibility for treatment of claimant's low back.

From the date of his original injury on April 7, 2004, claimant's symptoms would wax and wane but he was never pain-free. When claimant awoke the morning of May 16, 2004, his symptoms were worse than they had ever been before. Thereafter, claimant received further treatment from his personal physician and his symptoms returned to a level commensurate with what he had experienced before the May 16 flare-up.

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act.<sup>1</sup> In *Jackson*,<sup>2</sup> the Court held:

When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

However, the *Jackson* rule does not apply to new and separate accidental injuries. In *Stockman*,<sup>3</sup> the Court attempted to clarify the rule:

The rule in *Jackson* is limited to the results of one accidental injury. The rule was not intended to apply to a new and separate accidental injury such as occurred in the instant case. The rule in *Jackson* would apply to a situation where a claimant's disability gradually increased from a primary accidental injury, but not when the increased disability resulted from a new and separate accident.

In *Stockman*, claimant suffered a compensable back injury while at work. The day after being released to return to work, the claimant injured his back while moving a tire at home. The *Stockman* court found this to be a new and separate accident.

In *Gillig*<sup>4</sup> the claimant injured his knee in January 1973. There was no dispute that the original injury was compensable under the Workers Compensation Act. In March 1975, while working on his farm, the claimant twisted his knee as he stepped down from a tractor. Later, while watching television, the claimant's knee locked up on him. He underwent an additional surgery. The district court in *Gillig* found that the original injury was responsible for the surgery in 1975. This holding was upheld by the Kansas Supreme Court.

In *Graber*<sup>5</sup> the Kansas Court of Appeals was asked to reconcile *Gillig* and *Stockman*. It did so by noting that *Gillig* involved torn knee cartilage which had never properly healed. *Stockman*, on the other hand, involved a distinct re-injury of a back sprain that had subsided. The Court in *Graber* found that its claimant had suffered a new injury,

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<sup>1</sup> *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997).

<sup>2</sup> *Jackson v. Stevens Well Service*, 208 Kan. 637, Syl. ¶ 1, 493 P.2d 264 (1972).

<sup>3</sup> *Stockman v. Goodyear Tire and Rubber Co.*, 211 Kan. 260, 263, 505 P.2d 697 (1973).

<sup>4</sup> *Gillig v. Cities Service Gas Co.*, 222 Kan. 369, 564 P.2d 548 (1977).

<sup>5</sup> *Graber v. Crossroads Cooperative Ass'n*, 7 Kan. App. 2d 726, 648 P.2d 265, rev. denied 231 Kan. 800 (1982).

which was "a distinct trauma-inducing event out of the ordinary pattern of life and not a mere aggravation of a weakened back."

Considering that claimant had a clear history of ongoing symptoms and treatment since the date of his original injury and no clear or specific subsequent accident, traumatic event, or acute injury, the Board finds and concludes that claimant's present symptoms and complaints are a direct and natural consequence of his original injury in this docketed claim.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated January 4, 2005, is reversed, and respondent is ordered to provide claimant with a list of three physicians from which he is to select an authorized treating physician.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of April, 2005.

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BOARD MEMBER

c: Rodney C. Olsen, Attorney for Claimant  
Lynn M. Curtis, Attorney for Respondent and its Insurance Carrier  
Bryce D. Benedict, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director